

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DAVID VANN,

Plaintiff,

-against-

CITY OF ROCHESTER, et al.,

Defendants.

**NOTICE OF MOTION TO COMPEL
AND FOR DISCOVERY SANCTIONS**

INDEX NO.: 18-cv-6464 (EAW)(MJP)

PLEASE TAKE NOTICE that upon the annexed memorandum of law, declaration of Elliot Shields, duly sworn on December 23, 2022, the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Mark W. Pedersen, at the United States Courthouse, 100 State Street, Rochester, New York, on January 13, 2023 at 1:00 p.m. or as soon thereafter as counsel may be heard, for an order:

- a. pursuant to Rule 37(b)(2)(A)(vii), holding defendants in contempt of court for failure to comply with the Court's April 13, 2021 discovery order, ECF 57; and
- b. pursuant to Rule 37(b)(2)(C), ordering that defendants must pay plaintiff's reasonable expenses, including attorney's fees, caused by defendants' failure to comply with the Court's April 13, 2021 discovery order, ECF 57; and
- c. pursuant to Rule 37(b)(2)(A)(vi), granting default judgement in favor of plaintiff on his *Monell* claims—the Eleventh and Twelfth Claims for

Relief—as sanctions for defendants’ failure to comply with the Court’s April 13, 2021 discovery order, ECF 57; or

- d. pursuant to Rule 37(b)(2)(A)(i), finding that the facts alleged in the First Amended Complaint in support of plaintiff’s *Monell* claims—the Eleventh and Twelfth Claims for Relief—be taken as established for the purposes of establishing *Monell* liability, as sanctions for defendants’ failure to comply with the Court’s April 13, 2021 discovery order, ECF 57; or
- e. pursuant to Rule 37(b)(2)(A)(ii), prohibiting defendants from opposing plaintiff’s *Monell* claims—the Eleventh and Twelfth Claims for Relief in the First Amended Complaint—as sanctions for defendants’ failure to comply with the Court’s April 13, 2021 discovery order, ECF 57; or
- f. pursuant to Rule 37(b)(2)(A)(iii), striking defendants’ answer for failure to comply with the Court’s April 13, 2021 discovery order, ECF 57; or
- g. pursuant to Rule 37(b)(2)(A)(iii), striking defendants’ affirmative defenses for failure to comply with the Court’s April 13, 2021 discovery order, ECF 57; and
- h. Pursuant to Fed. R. Civ. P. 16(b)(4) modifying the scheduling order and entering Plaintiff’s Proposed Order, which is annexed hereto as Exhibit “F”; and
- i. granting such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7(a)(1) of the Local Rules of this Court, the Plaintiffs intend to file reply papers and therefore, pursuant to Rule 7(b)(2)(B), Defendants are required to serve responding papers, if any, at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
December 23, 2022

Respectfully Submitted,
ROTH & ROTH LLP

By: ~/s/~
Elliot Dolby Shields, Esq.
Counsel for Plaintiff
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To: All parties (via ECF)